



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of ABC Leasing, Inc., d/b/a Business Sense, Inc.

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Case No. TR-01-0032

**FINAL DECISION**

By letter dated December 20, 2000, the Minneapolis Auto Auction, by Attorney Ben G. Campbell, filed a claim against the surety bond of ABC Leasing, Inc., d/b/a Business Sense, Inc. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on November 8, 2001. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Minneapolis Auto Auction  
P. O. Box 408  
Maple Grove, MN 55369, by

Attorney Ben G. Campbell  
Rider, Bennett, Egan & Arundel, LLP  
333 South Seventh Street, Suite 2000  
Minneapolis, MN 55402

ABC Leasing, Inc., d/b/a Business Sense, Inc.  
C/o Jim Canfield  
4051 8<sup>th</sup> Street S  
Wisconsin Rapids, WI 54494

Capitol Indemnity Corporation  
P. O. Box 5900  
Madison, WI 53705-5900

### Findings of Fact

1. ABC Leasing, Inc., d/b/a Business Sense, Inc. (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's Wisconsin license expired on September 30, 2000, and the Dealer is no longer in business. The Dealer's facilities were located at 2550 Plover Road, Wisconsin Rapids, Wisconsin, 54494.

2. The Dealer had a bond satisfying the requirements of Wis. Stat. § 218.0114(5)(a) in force from September 28, 1998 until October 28, 2001 (bond #725368 from Capitol Indemnity Corporation, Madison, Wisconsin).

3. The Minnesota Auto Auction (MAA) is a business located at 8001 Jefferson Highway, Maple Grove, Minnesota. The MAA sells at auction motor vehicles to licensed motor vehicle dealers.

4. On October 25, 2000, the Dealer purchased a 2000 Cadillac Deville from the MAA. The Dealer paid for the vehicle with a check. On December 4, 2000, the check written by the Dealer was returned to the MAA for insufficient funds. The insufficient check issued by the Dealer was in the amount of \$27,375.00.

5. By letter dated December 20, 2000, the MAA filed a claim in the amount of \$27,375.00 against the Dealer's surety bond.

6. The MAA also obtained a judgment in the amount of \$36,947.37 against the Dealer. The judgment was entered in Hennepin County, Minnesota. The judgment was docketed in Wood County, Wisconsin on March 22, 2001.

7. The purchase of the vehicle by the Dealer constitutes a wholesale transaction between dealers. The bond claim procedure described in Wis. Admin. Code ch. Trans 140, is not intended to apply to transactions between dealers. Pursuant to Wis. Admin. Code § Trans 140.21(2)(a), claims by claimants licensed or required to be licensed under Wis. Stat. ch. 218, are to be disallowed. As a Minnesota auction dealer, the MAA presumably is not licensed under Wis. Stat. ch. 218 and; therefore, its claim is not expressly disallowed. However, the intent of the surety bond required for motor vehicle dealers is to protect consumers. It clearly was not the legislative intent to allow claims by out-of- state auction dealers, but not Wisconsin auction dealers.

### Conclusions of Law

1. The Minnesota Auto Auction's claim arose on October 25, 2000 the date ABC Leasing, Inc., d/b/a Business Sense, Inc., issued an insufficient funds check to the Minnesota Auto Auction. The surety bond issued to ABC Leasing, Inc., d/b/a Business Sense, Inc., by Capitol Indemnity Corporation covers a one-year period commencing on September 28, 2000. The claim arose during the period covered by the surety bond.

2. The Minnesota Auto Auction filed a claim against the motor vehicle dealer bond of ABC Leasing, Inc., d/b/a Business Sense, Inc., on December 20, 2000. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Claims filed by auction dealers licensed pursuant to Wis. Stat. § 218.305 are expressly disallowed pursuant to Wis. Admin. Code § Trans 140.21(2)(a). As a non-Wisconsin business, the Minnesota Auto Auction is presumably not licensed pursuant to Wis. Stat. Ch. 218. However, it would be contrary to the legislative intent underlying Wis. Stat. § 218.0114(5)(a), to allow a claim by an out-of state business that is disallowed to a Wisconsin business. Accordingly, the claim filed by the Minnesota Auto Auction is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

Order

1. The claim filed by the Minnesota Auto Auction against the motor vehicle dealer bond of ABC Leasing, Inc., d/b/a Business Sense, Inc., is DENIED.

Dated at Madison, Wisconsin on December 12, 2001.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_

MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

**NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.